

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

Quinton Jamahl Duruji and
Davina Monique Duruji,

Chapter 13

Case No. 22-41034

Debtors.

MEMORANDUM IN SUPPORT OF THE
OBJECTIONS AND MOTION TO DISMISS
OF THE UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE TO THE CONFIRMATION
OF THE DEBTORS' MODIFIED CHAPTER 13 PLAN

THE UNITED STATES OF AMERICA, Internal Revenue Service (“IRS”) by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota and Erin M. Secord, Assistant United States Attorney, submits the following memorandum in support of its objections to confirmation of the debtors’ Modified Chapter 13 plan filed on October 19, 2022, and motion to dismiss.

1. The IRS has a secured claim of \$443,408.27, an unsecured priority claim of \$296,566.63 and a general unsecured claim of \$185,482.67 against these debtors. The total claim is \$925,457.57, as set forth in the filed IRS Amended Proof of Claim.

2. Since no objections to the IRS tax claims have been filed, the claims are deemed allowed, pursuant to 11 U.S.C. § 502(a).

3. As the debtors have not properly filed a federal income tax return for the years 2018 and 2021, the actual tax liabilities are unknown. Any tax liabilities due for tax year 2021 would be priority taxes, which must be paid in full. The debtors should be

required to properly file their federal income tax return so that the priority tax liabilities can be fully determined and properly treated by the plan.

4. Pursuant to 11 U.S.C. § 1325(a)(9) the modified plan cannot be confirmed because the debtors failed to properly file their federal income tax returns for 2018 and 2021. The debtors submitted unsigned tax returns to the IRS. *See* Declaration of Rhonda M. Morris. Without the debtors' signatures, the IRS is unable to process the returns. *See id.*

5. Additionally, the modified plan fails to comply with 11 U.S.C. § 1325(a)(5)(B) (iii)(I) in that the payments on the IRS secured claim are not being made in equal monthly installments. Courts have routinely held that the equal monthly payment provision in §1325(a)(5)(B)(iii) prohibits a balloon payment. *In re Holliday*, No. 11-62315-13, 2012 Bankr. LEXIS 650 (Bankr. D. Mont. Feb. 23, 2012); *In re Romero* 539 B.R. 557 (Bankr. E.D. Wis 2015).

6. The debtors' modified plan is not feasible because the debtors cannot establish that they can make all the payments under the plan and comply with the plan. Furthermore, the debtors' schedules do not provide for payment of any income taxes that may become due during the pendency of the bankruptcy plan. This will create further tax liabilities throughout the proposed plan. As the proponent of their plan, the debtors bear the burden of proving the factors set forth in 11 U.S.C. §1325(a). *In re Hogue*, 78 B.R. 867, 872 (Bankr. S.D. Ohio 1987) and *In re Wagner*, 259 B.R. 694, 700-701 (B.A.P. 8th Cir. 2001). The IRS submits that the plan is grossly underfunded.

7. The modified plan fails to provide for payments to fully pay the IRS secured claim. As the plan fails to provide for the IRS secured claim and as the IRS has not accepted the plan, the plan cannot be confirmed under 11 U.S.C. § 1325(a)(5).

8. Failure of the debtors' modified plan to provide for full payment of the allowed IRS secured and priority tax claims is grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(c).

9. The debtors' failure to properly file federal income tax returns for the years 2018 and 2021 constitutes grounds for dismissal of the case pursuant to 11 U.S.C. § 1307(e).

WHEREFORE, for the foregoing reasons, the United States of America, Internal Revenue Service prays that the modified Chapter 13 plan filed by these debtors be denied confirmation, that the case be dismissed pursuant to 11 U.S.C. § 1307(c) and (e), and for such further relief as may be just and equitable.

Dated: November 3, 2022

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/e/Erin M. Secord

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